

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alyssa Rogowski	Team: Squad #14	CCRB Case #: 201901999	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 02/25/2019 10:25 PM	Location of Incident: Inside of § 87(2)(b)	18 Mo. SOL 4/11/2021	Precinct: 40		
Date/Time CV Reported Tue, 02/26/2019 12:32 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/06/2019 1:00 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Malachi Mckenith	02680	945983	040 PCT
2. POM Carlos Velasquez	15592	966384	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Malachi Mckenith	Discourtesy: Police Officer Malachi McKenith spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B . POM Malachi Mckenith	Off. Language: Police Officer Malachi McKenith made remarks to § 87(2)(b) based upon race.	§ 87(2)(b)
C . POM Malachi Mckenith	Force: Police Officer Malachi McKenith used physical force against § 87(2)(b)	§ 87(2)(b)
D . POM Malachi Mckenith	Force: Police Officer Malachi McKenith used a chokehold against § 87(2)(b)	§ 87(2)(b)
E . POM Malachi Mckenith	Abuse: Police Officer Malachi McKenith forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
F . POM Carlos Velasquez	Abuse: Police Officer Carlos Velasquez forcibly removed § 87(2)(b) to the hospital	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

On February 26<sup>th</sup>, 2019, § 87(2)(b) filed the following complaint via call to IAB, generating IAB log § 87(2)(b). The CCRB received § 87(2)(b) complaint on March 2, 2019.

On February 25<sup>th</sup>, 2019, at around 10:25pm, Department of Homeless Services (DHS) officers prevented § 87(2)(b) entering § 87(2)(b) Shelter, located at § 87(2)(b) in the Bronx, because they believed § 87(2)(b) was intoxicated. § 87(2)(b) called for NYPD assistance and Police Officer Malachi McKenith and Police Officer Carlos Velasquez, both of the 40<sup>th</sup> Precinct, responded. PO McKenith told § 87(2)(b) "I don't have time for this shit," and that he, "did not want to hear shit" (**Allegation A: Discourtesy**, § 87(2)(g)). PO McKenith also allegedly stated that he was an Israelite and that he, "did not have time for this shit, nigger" (**Allegation B: Offensive Language**, § 87(2)(g)).

PO McKenith then threw § 87(2)(b) to the ground (**Allegation C: Force**, § 87(2)(g)). After handcuffing § 87(2)(b), PO McKenith lifted § 87(2)(b) up from the ground using the hood of his sweatshirt, which pulled the neck of the sweatshirt against § 87(2)(b) neck (**Allegation D: Force**, § 87(2)(g)). After § 87(2)(b) was handcuffed, he was transported via ambulance to § 87(2)(b) Hospital (**Allegations E and F: Abuse of Authority**, § 87(2)(g)). While in the ambulance with § 87(2)(b), PO McKenith stated, "I don't give a fuck" (**Allegation A continued**). After being seen by a doctor, § 87(2)(b) was released from the hospital. § 87(2)(g), § 87(4-b)

Surveillance footage from § 87(2)(b) shelter was provided by IAB (Board Review 01), which will be discussed in further detail below.

### Findings and Recommendations

**Allegation A—Discourtesy: Police Officer Malachi McKenith spoke discourteously to § 87(2)(b)**

**Allegation B—Offensive Language: Police Officer Malachi McKenith made remarks to § 87(2)(b) based upon race.**

§ 87(2)(b) testified that on February 25<sup>th</sup>, 2019, at around 10:25pm, he went to § 87(2)(b) Shelter where he had been staying for about a week and a half (Board Review 02, 03). § 87(2)(b) acknowledged that he smelled of alcohol. When he tried to go through the security check-in, a female § 87(2)(b) prevented § 87(2)(b) from entering, and stated that she believed he was intoxicated. § 87(2)(b) then called for both NYPD and EMS. After about 30 minutes, PO McKenith and PO Velasquez arrived. § 87(2)(b) told PO McKenith that he wanted to go upstairs and go to bed and PO McKenith allegedly said, "I don't have time for this shit," that he "did not want to hear shit," and that he was about to get off work and was tired. PO McKenith then said that he was an Israelite and that he "did not have time for this shit, nigger." § 87(2)(b) interpreted PO McKenith's statement that he was an Israelite to be condescending and discriminatory towards § 87(2)(b).

§ 87(2)(b) stated that later, once he was in the ambulance with PO McKenith, PO McKenith also stated, "I don't give a fuck," and again repeated that he was an Israelite.

When asked if at any point during this interaction he told § 87(2)(b) "I don't have time for this shit," and, "I don't give a fuck," PO McKenith stated that it was possible he did (Board Review 04, 05). When asked why he may have stated this, PO McKenith stated that he did not



The investigation obtained surveillance video from § 87(2)(b) Shelter (Board Review 01). § 87(2)(b) who is in the army green jacket and bright green hooded sweatshirt, can be seen holding a piece of paper and gesturing for a pen. § 87(2)(b) picks up a pen from a table and bends over the table, appearing to write on the piece of paper he is holding. PO McKenith then approaches § 87(2)(b) grabs him by his left arm, pulls him away from the table, then uses his leg to sweep § 87(2)(b) legs out from under him. § 87(2)(b) falls to the ground, knees first, and is rolled onto his stomach. After PO McKenith and PO Velasquez handcuff § 87(2)(b) PO McKenith moves § 87(2)(b) into a seated position.

PO McKenith stated that § 87(2)(b) was being irrational, which he defined as § 87(2)(b) being uncooperative. Though PO McKenith stated that § 87(2)(b) was an angry drunk, PO McKenith denied that § 87(2)(b) was being unreasonably loud and did not observe § 87(2)(b) behavior to be violent or aggressive. After PO McKenith spoke with § 87(2)(b) told PO McKenith that he needed a pen to write down PO McKenith's shield number. PO McKenith told § 87(2)(b) that he was not going to give him a pen and stated in his interview that he felt that § 87(2)(b) could use the pen as a weapon to stab someone. Aside from knowing that people have been stabbed with pens in the past, PO McKenith stated that it was only a, "better safe than sorry," mindset that led him to want to prevent § 87(2)(b) from obtaining a pen.

After § 87(2)(b) first asked for a pen, PO McKenith told him to put his hands behind his back. § 87(2)(b) replied, "no," then reached toward a desk nearby. PO McKenith, concerned that § 87(2)(b) was reaching for a pen, stated, "Don't do that," and instructed § 87(2)(b) to put his hands behind his back. Before § 87(2)(b) could grab the pen, PO McKenith grabbed § 87(2)(b) by the right arm and performed an "arm bar," which involved grabbing § 87(2)(b) wrist, using his forearm to put pressure on § 87(2)(b) elbow so that § 87(2)(b) legs would buckle, then turning § 87(2)(b) around to bring him to the ground. PO McKenith stated that § 87(2)(b) tried to pull his arm away from him. Once § 87(2)(b) was on the ground, PO McKenith and PO Velasquez handcuffed § 87(2)(b) for their safety.

PO McKenith was shown the surveillance video and confirmed that he considered the video to be a fair and accurate representation of this aspect of the incident. At 0:33 mark in the video, PO McKenith identified the actions that he is seen taking as the arm bar and forcible takedown that he described.

PO Velasquez stated that § 87(2)(b) asked for a pen because he wanted to get all the names and shield numbers of the DHS security. While looking around for a pen, § 87(2)(b) saw one in PO McKenith's front shirt pocket and asked to use it. § 87(2)(b) gestured towards the pen as if trying to grab it and approached PO McKenith. § 87(2)(b) did not make contact with PO McKenith, rather, he just got closer, causing PO McKenith to step away from § 87(2)(b). PO McKenith then stated that he would not give § 87(2)(b) his pen "because he would not let him hurt anybody or any others." § 87(2)(b) then immediately attempted to grab a pen from a nearby table. After § 87(2)(b) reached for the pen on the table, PO McKenith guided § 87(2)(b) to the ground by grabbing his arm. PO Velasquez did not recall if PO McKenith issued any commands to § 87(2)(b) prior to grabbing him. PO Velasquez then assisted in handcuffing § 87(2)(b).

§ 87(2)(b) stated that earlier this same evening, prior to the incident in this complaint, she and her staff had called an ambulance to take § 87(2)(b) to the hospital because he had arrived at the shelter intoxicated and was yelling, cursing at, and threatening DHS staff. Regarding the incident in this complaint, § 87(2)(b) stated that a few hours after § 87(2)(b) had initially been taken to the hospital, he returned to the shelter and appeared more intoxicated and more upset than he had been before. § 87(2)(b) testified that § 87(2)(b).



§ 87(2)(b) was very upset that he was sent to the hospital and he refused to calm down or have a seat. Another ambulance was called for § 87(2)(b) and this time, EMS requested assistance from the NYPD because § 87(2)(b) refused to get into the ambulance.

§ 87(2)(b) stated that prior to NYPD arriving, both DHS and EMS told § 87(2)(b) to calm down, but § 87(2)(b) continued to threaten them and curse at them. When NYPD arrived, DHS and EMS informed them of the situation, then the NYPD officers approached § 87(2)(b) and explained that he had to leave the facility because he was intoxicated. PO Teixeira stated that when NYPD arrived, § 87(2)(b) was screaming and was irate. § 87(2)(b) wanted a pen to get shield numbers from all the officers and observed that one of the NYPD officers had a pen in his shirt pocket. § 87(2)(b) stated, "Give me that pen," and moved towards the officer reaching for the pen. The officer told § 87(2)(b) numerous times that he would give § 87(2)(b) the pen, but § 87(2)(b) had to step back. § 87(2)(b) continued to approach and reached forward and tried to grab the pen off his shirt. The NYPD officers then handcuffed § 87(2)(b) then left in the ambulance.

NYPD Patrol Guide Procedure 221-01 states that, "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances" (Board Review 10).

Regardless of whether § 87(2)(b) presented an active threat by wanting a pen or if, as the video appears, he wanted to write something, it is undisputed that § 87(2)(b) was not compliant with NYPD officers, DHS staff, and EMS during this incident. PO McKenith and PO Velazquez responded to the location to assist EMS with removing § 87(2)(b) who continued to refuse to go with EMS even after the arrival of the officers. Furthermore, this was the second time in one night that § 87(2)(b) was removed to the hospital for intoxication, a violation of the DHS shelter policy. Additionally, § 87(2)(b) did not sustain any injuries as a result of the forcible takedown.

§ 87(2)(g)

#### **Allegation D – Force: Police Officer Malachi McKenith used a chokehold against § 87(2)(b)**

§ 87(2)(b) did not recall if PO McKenith ever pulled on his clothing or did anything which could have restricted his breathing.

The surveillance footage from the shelter shows that after he is handcuffed, § 87(2)(b) sits on the ground while PO McKenith stands directly behind him with his hand on the hood of § 87(2)(b) sweatshirt for approximately 20 seconds. At the 1:50 minute mark, PO McKenith uses one hand to grab § 87(2)(b) arms, near his handcuffs, and keeps his other hand on § 87(2)(b) hood. Using both § 87(2)(b) arms and § 87(2)(b) hood, PO McKenith pulls § 87(2)(b) upward into a standing position. As PO McKenith pulls § 87(2)(b) upward using the hood of his sweatshirt, the hood is stretched taut, which pulls the neck § 87(2)(b) sweatshirt against § 87(2)(b) neck for approximately three seconds. § 87(2)(b) is standing upright by the 1:53 minute mark. The video ends with PO McKenith walking § 87(2)(b) out of the frame (Board Review 01).

Upon viewing the shelter surveillance video in his interview, from 1:32 minute mark to the 1:53 minute mark, PO McKenith testified he is holding onto § 87(2)(b) hood and did so as a means of controlling § 87(2)(b) because the hood was the closest thing for him to grab. PO McKenith confirmed that he stood § 87(2)(b) up by grabbing onto § 87(2)(b) arm and hood but did not intentionally grab § 87(2)(b) hood to stand him up, rather, that he just still had his hand on the hood. PO McKenith stated that the majority of his upward pull was on § 87(2)(b) arms as opposed to his hood.

PO Velasquez did not remember if PO McKenith had pulled up on § 87(2)(b) hood and only recalled that PO McKenith had stood § 87(2)(b) up.

NYPD Patrol Guide Procedure 221-01 states that members of service shall not use a chokehold, which is defined as including, but not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air (Board Review 10).

Given the surveillance footage, which depicts PO McKenith lift § 87(2)(b) from the ground by the hood of sweatshirt with enough force that the hood is stretched taut for approximately three seconds, § 87(2)(g)

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**Allegation E – Abuse of Authority: Police Officer Malachi McKenith forcibly removed § 87(2)(b) to the hospital.**

**Allegation F – Abuse of Authority: Police Officer Carlos Velasquez forcibly removed § 87(2)(b) to the hospital**

After § 87(2)(b) was handcuffed, he was transported via ambulance to § 87(2)(b) Hospital. PO McKenith rode in the ambulance with § 87(2)(b). After being seen by a doctor, § 87(2)(b) § 87(2)(b)

Medical records from § 87(2)(b) Medical Center documented that § 87(2)(b) was brought in by EMS after being, “sent from shelter for intoxicated aggressive behavior with shelter staff and NYPD” (Board Review 12). The attending physician noted that § 87(2)(b) was, “brought from shelter because he was drinking and arguing with staff/housing police...Denies any complaint [and] calm after police left.” § 87(2)(b) was diagnosed with alcohol dependence with intoxication § 87(2)(b)

PO McKenith prepared an AIDED for this incident, which notes that, “At TPO, DHS called about an intoxicated male at location. Aided was removed to § 87(2)(b) Hospital” (Board Review 13).

EVENTS from this incident indicate that EMS responded to the shelter and requested a police vehicle for an uncooperative aided (Board Review 14, 23).

§ 87(2)(b) stated that shelter policy is that intoxicated individuals are not permitted to enter the shelter. The protocol for when an intoxicated individual arrives at the shelter is to call an ambulance and have the person wait for EMS. § 87(2)(b) clarified that DHS does not let intoxicated people leave the shelter out of fear that the individual could get more hurt outside. § 87(2)(b) stated that on this day, she believed § 87(2)(b) was a danger to himself and others because of his irate behavior, which she described as § 87(2)(b) yelling, cursing at, and threatening DHS staff, and his intoxicated state, which she described as § 87(2)(b) smelling of alcohol and stumbling. § 87(2)(b) added that

the behavior § 87(2)(b) exhibited on this evening was a pattern of behavior that she had observed § 87(2)(b) execute in her past interactions with him.

§ 87(2)(b) recalled that when § 87(2)(b) returned to the shelter after having been previously removed to the hospital, another ambulance was called for § 87(2)(b) because he seemed more intoxicated than before. This time, EMS requested assistance from NYPD because § 87(2)(b) refused to get into the ambulance. § 87(2)(b) stated that NYPD was just assisting EMS in accordance in shelter policy.

PO McKenith testified that when he and PO Velasquez arrived at the shelter, § 87(2)(b) informed them that § 87(2)(b) was prohibited from entering the shelter because he was intoxicated and that he was acting irate and irrational. PO McKenith observed a very strong smell of alcohol on § 87(2)(b) but had no other reason to believe he was intoxicated. PO McKenith stated that he and PO Velasquez made the decision to remove § 87(2)(b) to the hospital immediately after arriving on scene and that this decision was based on DHS' observations of § 87(2)(b) intoxicated and irate state. PO McKenith was familiar with DHS' policy not to admit intoxicated residents into the facility. When EMS arrived, PO McKenith told them that § 87(2)(b) was intoxicated and that he would be going to the hospital. PO McKenith added that EMS does not usually fight with officers on a decision to go to the hospital and that EMS did not offer any medical opinion in this case.

PO Velasquez observed that § 87(2)(b) was intoxicated, had slurred speech and was imbalanced, and that he seemed agitated and aggravated about the situation. PO Velasquez stated that he and his partner made the decision to remove § 87(2)(b) to the hospital because he was intoxicated. When the ambulance arrived, the EMTs agreed that § 87(2)(b) needed to go to the hospital.

NYPD Patrol Guide Procedure 216-01 states that uniformed members of service shall cooperate with ambulance/hospital personnel in every reasonable manner (Board Review 15).

Although both PO McKenith and PO Velasquez stated that they made the decision to remove § 87(2)(b) to the hospital, it is clear from § 87(2)(b) testimony that § 87(2)(b) was removed to the hospital as a matter of shelter procedure and that PO McKenith and PO Velasquez were called to the scene in order to assist EMS. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (Board Review 20).
- PO Velasquez has been a member-of-service for one year and this is the first CCRB investigation to which he has been party.
- PO McKenith has been a member-of-service for 12 years and has been a subject in 18 CCRB complaints, and 61 allegations, eight of which were substantiated.
  - Case 201308493 involved substantiated allegations of threat of arrest and offensive language - ethnicity. The Board recommended command discipline B and the NYPD imposed command discipline B and instructions.
  - Case 201400407 involved a substantiated allegation of force. The Board recommended command discipline B and the NYPD imposed command discipline B.
  - Case 201706698 involved substantiated allegations of threat of arrest, retaliatory arrest, and stop of person, for which the Board recommended formalized training and PO McKenith received formalized training, as well as a substantiated allegation of threat of force for which no disciplinary action was imposed.
  - § 87(2)(g)

### Mediation, Civil and Criminal Histories

- [illegible]



- As of September 27<sup>th</sup>, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 22).

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Squad No.: 14

Investigator: Alyssa Rogowski Inv. Alyssa Rogowski 05/20/2020  
Signature Print Title & Name Date

Squad Leader: Cassandra Fenkel IM Cassandra Fenkel 05/20/2020  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date